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17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA, and)
20 STATE OF CALIFORNIA, on behalf)
of the Department of Toxic)
21 Substances Control,)
Plaintiffs,)

22 v.)

23 OIL & SOLVENT PROCESS COMPANY,)
24 CHEMICAL WASTE MANAGEMENT,)
INC., FAIRCHILD HOLDING)
25 CORPORATION, and R. H.)
PETERSON COMPANY,)
26 Defendants.)
27
28

Consolidated Cases:

- (1) CV 98-0760 TJH (JGx)
(2) CV 97-8230 TJH (RNBx)
(3) CV 96-6634 TJH (RNBx)

Partial Consent Decree For
Fairchild Holding Corporation

Hon. Terry J. Hatter

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PARTIAL CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed two complaints in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred and to be incurred by the United States for response actions taken at or in connection with the release or threatened release of hazardous substances at the Suburban Operable Unit of the San Gabriel Valley Superfund Sites, Areas 1-4, located in Los Angeles County, California.

B. The State of California ("State"), on behalf of the State Department of Toxic Substances Control ("DTSC"), also filed a complaint in this matter pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607. DTSC in its complaint seeks judgment against all defendants, jointly and severally, for all costs incurred by the state including legal expenses and interest, in connection with a release or threatened release of hazardous substances at the Suburban Operable Unit of the San Gabriel Valley Superfund Sites. DTSC also seeks declaratory judgment pursuant to § 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that the defendants, jointly and severally, are liable for all future response costs to be incurred by DTSC at this site.

C. Defendant Fairchild Holding Corporation ("Settling Defendant") does not admit and expressly deny any liability to

1 Plaintiffs arising out of the transactions or occurrences alleged
2 in the complaints. The Plaintiffs and Settling Defendant agree
3 that neither this Consent Decree, nor entry into settlement, nor
4 any payments pursuant to this Consent Decree shall constitute or
5 be construed as a finding or an admission, adjudication or
6 acknowledgment of any fact or law, or of any liability, fault or
7 wrongdoing, or evidence of such, or an admission of violation of
8 any law, rule or regulation by Settling Defendant.

9 D. The purpose of this Consent Decree is to avoid
10 prolonged litigation and to provide for Settling Defendant's
11 payment of specified amounts of the past response costs for the
12 Suburban Operable Unit of the San Gabriel Valley Superfund Sites.
13 The parties to this Consent Decree recognize that Settling
14 Defendant's payment represents only a part of the total past
15 costs of the Suburban Operable Unit and of the past costs of
16 basin-wide investigations relating to their former properties
17 located within the Suburban Operable Unit. In entering into this
18 Consent Decree, the Plaintiffs have considered the circumstances
19 of the releases and threatened releases of hazardous substances
20 in the Basin, the involvement of Settling Defendant in the
21 ownership and operation of a facility located in the Suburban
22 Operable Unit, and litigation risks in connection with the
23 Settling Defendant.

24 E. The United States, DTSC and Settling Defendant agree,
25 and this Court by entering this Consent Decree finds, that this
26 Consent Decree has been negotiated by the Parties in good faith,
27 that settlement of this matter will avoid prolonged and
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1 complicated litigation between the Parties, and that this Consent
2 Decree is fair, reasonable, and in the public interest.

3 THEREFORE, with the consent of the parties to this Consent
4 Decree, it is ORDERED, ADJUDGED, AND DECREED:

5 II. JURISDICTION

6 1. This Court has jurisdiction over the subject matter of
7 this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C.
8 §§ 9607 and 9613(b) and also has personal jurisdiction over
9 Settling Defendant. Settling Defendant consents to and shall not
10 challenge entry of this Consent Decree or this Court's
11 jurisdiction to enter and enforce this Consent Decree.

12 III. PARTIES BOUND

13 2. This Consent Decree is binding upon the United States
14 and DTSC, and upon Settling Defendant and its successors and
15 assigns. Any change in ownership or corporate or other legal
16 status, including but not limited to, any transfer of assets or
17 real or personal property, shall in no way alter the status or
18 responsibilities of Settling Defendant under this Consent Decree.

19 IV. DEFINITIONS

20 3. Unless otherwise expressly provided herein, terms used
21 in this Consent Decree which are defined in CERCLA or in
22 regulations promulgated under CERCLA shall have the meaning
23 assigned to them in CERCLA or in such regulations. Whenever
24 terms listed below are used in this Consent Decree or in any
25 appendix attached hereto, the following definitions shall apply:

26 a. "Basin-wide Response Costs" shall mean all costs,
27 including but not limited to direct and indirect costs, together
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1 with accrued Interest, that the United States and DTSC have paid
2 for Basin-wide/non-operable unit specific response actions in
3 connection with the San Gabriel Valley Superfund Sites, Areas
4 1-4.

5 b. "CERCLA" shall mean the Comprehensive Environmental
6 Response, Compensation, and Liability Act of 1980, as amended, 42
7 U.S.C. § 9601, et seq.

8 c. "Consent Decree" shall mean this Consent Decree and
9 all appendices attached hereto. In the event of conflict between
10 this Consent Decree and any appendix, the Consent Decree shall
11 control.

12 d. "Day" shall mean a calendar day. In computing any
13 period of time under this Consent Decree, where the last day
14 would fall on a Saturday, Sunday, or federal holiday, the period
15 shall run until the close of business of the next working day.

16 f. "DOJ" shall mean the United States Department of
17 Justice and any successor departments, agencies or
18 instrumentalities of the United States.

19 e. "DTSC" shall mean the California Department of
20 Toxic Substances Control and any successor departments or
21 agencies.

22 g. "DTSC Past Response Costs" shall mean all costs,
23 including but not limited to direct and indirect costs, together
24 with accrued Interest, that DTSC, and the State on behalf of
25 DTSC, have paid through the date of lodging of this Consent
26 Decree in response to the release or threatened release of
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1 hazardous substances at or in connection with the Site, but not
2 including amounts reimbursed to DTSC by EPA.

3 h. "EPA" shall mean the United States Environmental
4 Protection Agency and any successor departments, agencies or
5 instrumentalities of the United States.

6 i. "EPA Hazardous Substance Superfund" shall mean the
7 Hazardous Substance Superfund established by the Internal Revenue
8 Code, 26 U.S.C. § 9507.

9 j. "Interest" shall mean interest at the current rate
10 specified for interest on investments of the Hazardous Substance
11 Superfund established by 26 U.S.C. § 9507, compounded annually on
12 October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

13 k. "Paragraph" shall mean a portion of this Consent
14 Decree identified by an arabic numeral or an upper or lower case
15 letter.

16 l. "Parties" shall mean the United States, the DTSC,
17 and Settling Defendant.

18 m. "Past Response Costs" shall mean all costs,
19 including but not limited to direct and indirect costs and that
20 portion of the Basin-wide Response Costs, that EPA, and DOJ on
21 behalf of EPA, have paid at or in connection with the Site
22 through the date of lodging of this Consent Decree, plus accrued
23 Interest on all such costs through such date.

24 n. "Plaintiffs" shall mean the United States and the
25 California Department of Toxic Substances Control.

26 o. "San Gabriel Valley Superfund Sites Special
27 Account" shall mean the special account established for the Site

1 by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §
2 9622(b)(3).

3 p. "Section" shall mean a portion of this Consent
4 Decree identified by a roman numeral.

5 q. "Settling Defendant" shall mean Fairchild Holding
6 Corporation.

7 r. "Site" shall mean the Suburban Operable Unit of the
8 San Gabriel Valley Superfund Sites, Areas 1,2 and 4, including
9 the site formerly owned and operated by Fairchild Holding
10 Corporation, located at 13001 East Temple Avenue in the City of
11 Industry, in Los Angeles County, California, and all areas that
12 are, or become, contaminated by past releases of chlorinated
13 solvents and "BTEX" compounds (Benzene, Toluene, Ethylbenzene and
14 Xylene) emanating therefrom.

15 s. "State" shall mean the State of California.

16 t. "United States" shall mean the United States of
17 America, including its departments, agencies and
18 instrumentalities.

19 **V. REIMBURSEMENT OF RESPONSE COSTS**

20 4. Payment of Past Response Costs to the EPA Hazardous
21 Substance Superfund. Settling Defendant shall pay to the EPA
22 Hazardous Substance Superfund \$712,500 in reimbursement of Past
23 Response Costs according to the following schedule:

24 a. \$237,500 by January 7, 2003, or within 15 days of
25 entry of this Consent Decree, whichever is later;

26 b. \$237,500 by April 1, 2003;

27 c. \$237,500 by June 30, 2003.

1 These payments, if timely made, include the Interest accrued from
2 the time of settlement. Settling Defendant shall make these
3 payments by FedWire Electronic Funds Transfer ("EFT") to the U.S.
4 Department of Justice account in accordance with current EFT
5 procedures, referencing the San Gabriel Valley Superfund Sites,
6 Area 1 (Suburban Operable Unit), the USAO File Number, the EPA
7 Region and Site Spill ID Number 09-M3, and DOJ Case Number 90-11-
8 3-1691. Settling Defendant shall make these payments in
9 accordance with instructions provided by the Financial Litigation
10 Unit of the U.S. Attorney's Office in the Central District of
11 California following lodging of the Consent Decree. Any payments
12 received by the Department of Justice after 4:00 p.m. Eastern
13 Time shall be credited on the next business day. For each
14 payment, Settling Defendant shall send notice to EPA and DOJ that
15 the payment has been made as specified in Section XIII (Notices
16 and Submissions).

17 5. The amounts paid by Settling Defendant to the United
18 States pursuant to Paragraph 4 shall be deposited in the San
19 Gabriel Valley Superfund Sites Special Account within the EPA
20 Hazardous Substance Superfund to be retained and used to conduct
21 or finance response actions at or in connection with the San
22 Gabriel Valley Superfund Sites, or transferred by EPA to the EPA
23 Hazardous Substance Superfund.

24 6. Payment of Past Response Costs to DTSC. Settling
25 Defendant shall pay to DTSC \$37,500 in reimbursement of Past
26 Response Costs according to the following schedule:
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- 1 a. \$12,500 by January 7, 2003, or within 15 days of
2 entry of this Consent Decree, whichever is later;
3 b. \$12,500 by April 1, 2003;
4 c. \$12,500 by July 1, 2003.

5 These payments, if timely made, include the Interest accrued from
6 the time of settlement. Settling Defendant shall make these
7 payments by certified check or cashier's check, made payable to
8 Cashier, Department of Toxic Substances Control, which shall be
9 forwarded to:

10 Department of Toxic Substances Control
11 State of California
12 Accounting Office
1001 I Street
Sacramento, California 95814

13 Settling Defendant shall send a transmittal letter with its check
14 referencing the San Gabriel Valley Superfund Sites, Areas 1-4
15 (Suburban Operable Unit), Project Code No. 300131. Settling
16 Defendant shall also send a copy of each check and transmittal
17 letter to DTSC, EPA and DOJ as specified in Section XIII (Notices
18 and Submissions).

19 **VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE**

20 7. Interest on Late Payments. In the event that any
21 payment required by Section V (Reimbursement of Response Costs),
22 or Section VI, Paragraph 8 (Stipulated Penalties), is not
23 received when due, Interest shall accrue on the unpaid balance
24 beginning on the date due and through the date of payment.

25 8. Stipulated Penalties.

26 a. If any amounts due to the United States or to DTSC
27 under this Consent Decree are not paid by the required date,
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1 Settling Defendant shall pay to the United States if the delayed
2 payment is for Past Response Costs, or to DTSC if the delayed
3 payment is for DTSC Past Response Costs, as a stipulated penalty,
4 in addition to any Interest required by Paragraph 7, \$500 per
5 violation per day for the first 15 days and \$1,000 thereafter per
6 violation per day that Settling Defendant's payment is late.

7 b. If Settling Defendant does not comply with Section
8 X (Site Access), or Section XI (Access to Information), Settling
9 Defendant shall pay to the United States, as a stipulated
10 penalty, \$1,000 per violation per day of such noncompliance.

11 c. Stipulated penalties are due and payable within 30
12 days of the date of the demand for payment of the penalties by
13 EPA or DTSC. All payments to the United States under this
14 Paragraph shall be made by certified or cashier's check payable
15 to the "EPA Hazardous Substance Superfund" and shall be sent to:

16 U.S. Environmental Protection Agency, Region IX
17 Superfund Accounting
18 P.O. Box 360863M
 Pittsburgh, Pennsylvania 15251
 Attention: Collection Officer for Superfund

19 All payments shall indicate that the payment is for stipulated
20 penalties and shall reference the name and address of the party
21 making payment, the San Gabriel Valley Superfund Sites, Areas 1-4
22 (Suburban Operable Unit), the USAO File Number, EPA Region and
23 Site Spill ID Number 09-M3, and DOJ Case Number 90-11-3-1691.
24 Copies of the check[s] paid pursuant to this Paragraph, and any
25 accompanying transmittal letter[s], shall be sent to EPA and DOJ
26 as provided in Section XIII (Notices and Submissions).

1 d. All payments to DTSC under this Paragraph shall be
2 made by certified or cashier's check made payable to Cashier,
3 Department of Toxic Substances Control, and shall be sent to:

4 Department of Toxic Substances Control
5 State of California
6 Accounting Office
1001 I Street
Sacramento, California 95814

7 All payments shall indicate that the payment is for stipulated
8 penalties and shall reference the name and address of the party
9 making payment, and the San Gabriel Valley Superfund Sites, Areas
10 1-4 (Suburban Operable Unit), Project Code No. 300131. Settling
11 Defendant shall also send a copy of its check and transmittal
12 letter to DTSC as specified in Section XIII (Notices and
13 Submissions).

14 e. Penalties shall accrue as provided in Paragraph 8
15 regardless of whether Plaintiffs have notified Settling Defendant
16 of the violation or made a demand for payment, but need only be
17 paid upon demand. However, payment shall be considered timely so
18 long as Settling Defendant demonstrates that it has given timely
19 instructions to a competent financial institution for the subject
20 EFT to be made in a timely manner, and has promptly after the
21 transfer obtained a written verification from the financial
22 institution that the EFT was made in accordance with Settling
23 Defendant's instructions. All penalties shall begin to accrue on
24 the day after complete performance is due or the day a violation
25 occurs, and shall continue to accrue through the final day of
26 correction of the noncompliance or completion of the activity.

1 Nothing herein shall prevent the simultaneous accrual of separate
2 penalties for separate violations of this Consent Decree.

3 9. If the United States or DTSC brings an action to enforce
4 this Consent Decree against Settling Defendant, Settling
5 Defendant shall reimburse the United States and DTSC for all
6 costs of such action, including but not limited to costs of
7 attorney time.

8 10. Payments made under Paragraphs 7 through 9 shall be in
9 addition to any other remedies or sanctions available to
10 Plaintiffs by virtue of Settling Defendant's failure to comply
11 with the requirements of this Consent Decree.

12 11. Notwithstanding any other provision of this Section,
13 the United States and/or DTSC may, in their respective
14 unreviewable discretion, waive payment of any portion of the
15 stipulated penalties that have accrued to the respective
16 Plaintiff pursuant to this Consent Decree.

17 **VII. COVENANT NOT TO SUE BY PLAINTIFFS**

18 12. Covenant Not to Sue by United States. Except as
19 specifically provided in Paragraph 14 (Reservation of Rights by
20 United States and DTSC), the United States covenants not to sue
21 Settling Defendant pursuant to Section 107(a) of CERCLA, 42
22 U.S.C. § 9607(a), to recover Past Response Costs. This covenant
23 not to sue shall take effect upon payment to EPA of all amounts
24 required from Settling Defendant by Section V, Paragraph 4
25 (Payment of Response Costs to the United States) and Section VI,
26 Paragraphs 7 (Interest on Late Payments) and 8(a) (Stipulated
27 Penalties). Settling Defendant's covenant not to sue is

1 conditioned upon the satisfactory performance of its obligations
2 under this Consent Decree. This covenant not to sue extends only
3 to Settling Defendant and its respective employees, officers, and
4 directors, but only to the extent that the liability of such
5 employees, officers, and directors is based on their status, and
6 they have acted in their capacities as employees, officers, or
7 directors. This covenant not to sue does not extend to any other
8 person.

9 13. Covenant Not to Sue by DTSC. Except as specifically
10 provided in Paragraph 14 (Reservation of Rights by United States
11 and DTSC), DTSC covenants not to sue Settling Defendant pursuant
12 to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and comparable
13 state law to recover DTSC Past Response Costs. This covenant not
14 to sue shall take effect upon payment to DTSC of all amounts
15 required from Settling Defendant by Section V, Paragraph 6
16 (Payment of Response Costs to DTSC) and Section VI, Paragraphs 7
17 (Interest on Late Payments) and 8(a) (Stipulated Penalties).
18 Settling Defendant's covenant not to sue is conditioned upon the
19 satisfactory performance by Settling Defendant of its obligations
20 under this Consent Decree. This covenant not to sue extends only
21 to Settling Defendant and its respective employees, officers, and
22 directors, but only to the extent that the liability of such
23 employees, officers, and directors is based on their status, and
24 they have acted in their capacities as employees, officers, or
25 directors. This covenant not to sue does not extend to any other
26 person.

1 14. Reservation of Rights by United States and DTSC. The
2 covenants not to sue set forth in Paragraphs 12 and 13 do not
3 pertain to any matters other than those expressly specified
4 therein. The United States and DTSC reserve, and this Consent
5 Decree is without prejudice to, all rights against Settling
6 Defendant with respect to all other matters, including but not
7 limited to:

8 a. liability for failure of Settling Defendant to meet
9 a requirement of this Consent Decree;

10 b. liability for damages for injury to, destruction
11 of, or loss of natural resources, including the reasonable costs
12 of assessing such injury, destruction, or loss;

13 c. criminal liability;

14 d. liability for injunctive relief or administrative
15 order enforcement under Section 106 of CERCLA, 42 U.S.C. § 6906;

16 e. liability for costs incurred or to be incurred by
17 the United States that are not within the definition of Past
18 Response Costs;

19 f. liability for costs incurred or to be incurred by
20 DTSC that are not within the definition of DTSC Past Response
21 Costs;

22 g. liability arising from the past, present, or future
23 disposal, release, or threat of release of hazardous substances
24 outside of the Site; and

25 h. liability arising from Settling Defendant's future
26 acts or omissions regarding soil and groundwater contamination at
27 its former facility.

1 **VIII. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

2 15. Settling Defendant covenants not to sue and agrees not
3 to assert any claims or causes of action against the United
4 States or DTSC, or their contractors or employees, with respect
5 to Past Response Costs, DTSC Past Response Costs or this Consent
6 Decree, including but not limited to:

7 a. any direct or indirect claim for reimbursement from
8 the Hazardous Substance Superfund based on Sections 106(b)(2),
9 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607,
10 9611, 9612, or 9613, or any other provision of law;

11 b. any claims arising under the United States
12 Constitution, the California Constitution, State law, the Tucker
13 Act, 28 U.S.C. § 1491, or common law, arising out of or relating
14 to past or future access to, imposition of deed restrictions or
15 easements, or other restrictions on the use and enjoyment of
16 property identified in Paragraph 18 owned or controlled by the
17 Settling Defendant;

18 c. any claims for costs, fees or expenses incurred in
19 this action (including claims arising under the Equal Access to
20 Justice Act, as amended, 28 U.S.C. § 2412) or under any provision
21 of State law.

22 d. any claim arising out of response actions at the
23 Site for which the Past Response Costs or DTSC Past Response
24 Costs were incurred; and

25 e. any claim against the United States or DTSC
26 pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and
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1 9613, relating to Past Response Costs or DTSC Past Response
2 Costs.

3 16. Nothing in this Consent Decree shall be deemed to
4 constitute approval or preauthorization of a claim within the
5 meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.
6 § 300.700(d).

7 **IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

8 17. Nothing in this Consent Decree shall be construed to
9 create any rights in, or grant any cause of action to, any person
10 not a Party to this Consent Decree. Except as expressly provided
11 otherwise herein, each of the Parties reserves any and all rights
12 (including, but not limited to, any right to contribution),
13 defenses, claims, demands, and causes of action which each Party
14 may have with respect to any matter, transaction, or occurrence
15 relating in any way to the Site against any person not a Party
16 hereto.

17 18. The Parties agree, and by entering this Consent Decree
18 this Court finds, that Settling Defendant and its respective
19 employees, officers, and directors (but only to the extent that
20 the liability of such employees, officers, and directors is based
21 on their status, and they have acted in their capacities as
22 employees, officers, or directors), are entitled, as of the
23 effective date of this Consent Decree, to protection from
24 contribution actions or claims as provided by Section 113(f)(2)
25 of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in
26 this Consent Decree. The "matters addressed" in this Consent
27 Decree shall mean all response costs incurred as a result of past
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1 releases of chlorinated solvents and "BTEX" compounds (Benzene,
2 Toluene, Ethylbenzene and Xylene) from Settling Defendant's
3 former facility located at 13001 East Temple Avenue, City of
4 Industry, California, except that the "matters addressed" exclude
5 any EPA and DTSC response costs paid after the date of lodging of
6 this Consent Decree, and any response costs incurred in
7 connection with future groundwater remediation for the Site,
8 including groundwater remediation at the above facility.

9 19. Settling Defendant agrees that, with respect to any
10 suit or claim for contribution brought by it for matters related
11 to this Consent Decree, it will notify EPA, DOJ and DTSC in
12 writing no later than 30 days prior to the initiation of such
13 suit or claim. Settling Defendant also agrees that, with respect
14 to any suit or claim for contribution brought against it for
15 matters related to this Consent Decree, it will notify EPA, DOJ
16 and DTSC in writing within 10 days of service of the complaint or
17 claim upon it. In addition, Settling Defendant shall notify EPA,
18 DOJ and DTSC within 10 days of service or receipt of any Motion
19 for Summary Judgment, and within 10 days of receipt of any order
20 from a court setting a case for trial, for matters related to
21 this Consent Decree.

22 20. In any subsequent administrative or judicial proceeding
23 initiated by the United States or DTSC for injunctive relief,
24 recovery of response costs, or other relief relating to the Site,
25 Settling Defendant shall not assert, and may not maintain, any
26 defense or claim based upon the principles of waiver, res
27 judicata, collateral estoppel, issue preclusion, claim-splitting,
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1 or other defenses based upon any contention that the claims
2 raised by the United States or DTSC in the subsequent proceeding
3 were or should have been brought in the instant case; provided,
4 however, that nothing in this Paragraph affects the
5 enforceability of the Covenant Not to Sue by Plaintiffs set forth
6 in Section VII. Except as provided in Paragraph 15 and this
7 Paragraph, Settling Defendant does not waive and expressly
8 reserves all claims or defenses it may have.

9 **X. SITE ACCESS**

10 21. Commencing upon the date of lodging of this Consent
11 Decree, Settling Defendant agrees, to the extent that it has
12 access rights to the property identified in Paragraph 18, to
13 provide the United States, DTSC, and their representatives,
14 including EPA and its contractors, access at all reasonable times
15 to such property for the purpose of conducting any response
16 activity related to the Site, including but not limited to:

17 a. Monitoring of investigation, removal, remedial or
18 other activities at the Site;

19 b. Verifying any data or information submitted to the
20 United States or DTSC;

21 c. Conducting investigations relating to contamination
22 at or near the Site;

23 d. Obtaining samples;

24 e. Assessing the need for, planning, or implementing
25 response actions at or near the Site; and

26 f. Inspecting and copying records, operating logs,
27 contracts, or other documents maintained or generated by Settling
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1 Defendant or its agents, consistent with Section XI (Access to
2 Information).

3 22. Notwithstanding any provision of this Consent Decree,
4 the United States and DTSC retain all of their access authorities
5 and rights, including enforcement authorities related thereto,
6 under CERCLA, the Resource Conservation and Recovery Act, 42
7 U.S.C. § 6927, and any other applicable statutes or regulations.

8 **XI. ACCESS TO INFORMATION**

9 23. Settling Defendant shall provide to EPA and DTSC, upon
10 request, copies of all documents and information within its
11 possession or control or that of its contractors or agents
12 relating to activities at the Site, including, but not limited
13 to, sampling, analysis, chain of custody records, manifests,
14 trucking logs, receipts, reports, sample traffic routing,
15 correspondence, or other documents or information related to the
16 Site.

17 24. Confidential Business Information and Privileged
18 Documents.

19 a. Settling Defendant may assert business
20 confidentiality claims covering part or all of the documents or
21 information submitted to Plaintiffs under this Consent Decree to
22 the extent permitted by and in accordance with Section 104(e)(7)
23 of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
24 Documents or information determined to be confidential by EPA
25 will be accorded the protection specified in 40 C.F.R. Part 2,
26 Subpart B. If no claim of confidentiality accompanies documents
27 or information when they are submitted to EPA or DTSC, or if EPA
28

1 has notified Settling Defendant that the documents or information
2 are not confidential under the standards of Section 104(e)(7) of
3 CERCLA, the public may be given access to such documents or
4 information without further notice to Settling Defendant.

5 b. Settling Defendant may assert that certain
6 documents, records or other information are privileged under the
7 attorney-client privilege or any other privilege recognized by
8 federal or California state law. If Settling Defendant asserts
9 such a privilege in lieu of providing documents, it shall provide
10 Plaintiffs with the following: 1) the title of the document,
11 record, or information; 2) the date of the document, record, or
12 information; 3) the name and title of the author of the document,
13 record, or information; 4) the name and title of each addressee
14 and recipient; 5) a description of the subject of the document,
15 record, or information; and 6) the privilege asserted. However,
16 no documents, reports or other information created or generated
17 pursuant to the requirements of this or any other consent decree
18 with the United States shall be withheld on the grounds that they
19 are privileged. If a claim of privilege applies only to a
20 portion of a document, the document shall be provided to
21 Plaintiffs in redacted form to mask the privileged information
22 only. Settling Defendant shall retain all records and documents
23 that it claims to be privileged until the United States and DTSC
24 have had a reasonable opportunity to dispute the privilege claim
25 and any such dispute has been resolved in Settling Defendant's
26 favor.

1 c. No claim of confidentiality shall be made with
2 respect to any data, including but not limited to, all sampling,
3 analytical, monitoring, hydrogeologic, scientific, chemical, or
4 engineering data, or any other documents or information
5 evidencing conditions at or around the Site as provided in
6 Section 104(e)(7)(f) of CERCLA, 42 U.S.C. § 9604(e)(7)(f).

7 **XII. RETENTION OF RECORDS**

8 25. Until 10 years after the entry of this Consent Decree,
9 Settling Defendant shall preserve and retain all records and
10 documents now in its possession or control, or which come into
11 its possession or control, that relate in any manner to response
12 actions taken at the Site or the liability of any person for
13 response actions conducted and to be conducted at the Site,
14 regardless of any corporate retention policy to the contrary.

15 26. After the conclusion of the document retention period
16 in the preceding Paragraph, Settling Defendant shall notify EPA,
17 DOJ and DTSC at least 90 days prior to the destruction of any
18 such records or documents, and, upon request by EPA, DOJ or DTSC,
19 shall deliver any such records or documents to EPA or DTSC.

20 Settling Defendant may assert that certain documents, records, or
21 other information are privileged under the attorney-client
22 privilege or any other privilege recognized by federal law. If
23 Settling Defendant asserts such a privilege, it shall provide
24 Plaintiffs with the following: 1) the title of the document,
25 record, or information; 2) the date of the document, record, or
26 information; 3) the name and title of the author of the document,
27 record, or information; 4) the name and title of each addressee

1 and recipient; 5) a description of the subject of the document,
2 record, or information; and 6) the privilege asserted. However,
3 no documents, reports, or other information created or generated
4 pursuant to the requirements of this or any other consent decree
5 with the United States shall be withheld on the grounds that they
6 are privileged. If a claim of privilege applies only to a
7 portion of a document, the document shall be provided to
8 Plaintiffs in redacted form to mask the privileged information
9 only. Settling Defendant shall retain all records and documents
10 that they claim to be privileged until the United States and DTSC
11 have had a reasonable opportunity to dispute the privilege claim
12 and any such dispute has been resolved in Settling Defendant's
13 favor.

14 27. By signing this Consent Decree, Settling Defendant
15 certifies that, to the best of its knowledge and belief, it has:

16 a. conducted a thorough, comprehensive, good faith
17 search for documents, and has fully and accurately disclosed to
18 Plaintiffs, all non-privileged information currently in its
19 possession, or in the possession of its officers, directors,
20 employees, contractors or agents, which relates in any way to the
21 ownership, operation or control of the Site, or to the ownership,
22 possession, generation, treatment, transportation, storage or
23 disposal of a hazardous substance, pollutant or contaminant at or
24 in connection with the Site;

25 b. not altered, mutilated, discarded, destroyed or
26 otherwise disposed of any unique records, documents or other
27 information relating to its potential liability regarding the
28

1 Site, after notification of potential liability or the filing of
2 a suit against Settling Defendant regarding the Site, other than
3 in the ordinary course of business in compliance with federal and
4 state laws and not for an improper purpose; and

5 c. fully complied with any and all EPA requests for
6 information regarding the Site pursuant to Sections 104(e) and
7 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

8 **XIII. NOTICES AND SUBMISSIONS**

9 28. Whenever, under the terms of this Consent Decree,
10 notice is required to be given or a document is required to be
11 sent by one party to another, it shall be directed to the
12 individuals at the addresses specified below, unless those
13 individuals or their successors give notice of a change to the
14 other Parties in writing. Written notice as specified herein
15 shall constitute complete satisfaction of any written notice
16 requirement of the Consent Decree with respect to the United
17 States, EPA, DOJ, DTSC, and Settling Defendant, respectively.

18 **As to the United States or DOJ:**

19 Chief, Environmental Enforcement Section
20 Environment and Natural Resources Division
21 U.S. Department of Justice (DJ # 90-11-3-1691)
22 P.O. Box 7611
23 Washington, D.C. 20044-7611
24 202-616-8766; 202-514-2583 (fax)

25 **As to EPA:**

26 Remedial Project Manager, Suburban Operable Unit
27 San Gabriel Valley Superfund Site, Area 1
28 Superfund Division (SFD-7)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

1 Brett P. Moffatt
2 Assistant Regional Counsel (ORC-3)
3 U.S. Environmental Protection Agency, Region IX
4 75 Hawthorne Street
5 San Francisco, CA 94105
6 (415) 972-3946, (415) 947-3570 (fax)

7 As to the Department of Toxic Substances Control:

8 Ann Rushton
9 Deputy Attorney General, Environment Section
10 California Department of Justice
11 300 South Spring Street, #5000
12 Los Angeles, California 90013
13 213-897-2608; 213-897-2802 (fax)

14 Jacalyn Spizman
15 Project Manager, Site Mitigation Branch
16 Department of Toxic Substances Control, Region 3
17 5796 Corporate Avenue
18 Cypress, California 90630
19 714-484-5460; 714-484-5438 (fax)

20 As to Settling Defendant:

21 Donald E. Miller
22 General Counsel
23 The Fairchild Corporation
24 45025 Aviation Drive, Suite 400
25 Dulles, Virginia 20166-7516
26 703-478-5800; 703-478-5767 (fax)

27 Michael Hodge
28 Assistant General Counsel
The Fairchild Corporation
45025 Aviation Drive, Suite 400
Dulles, Virginia 20166-7516
703-478-5858; 703-478-5767 (fax)

29 **XV. RETENTION OF JURISDICTION**

30 29. This Court shall retain jurisdiction over this matter
31 for the purpose of interpreting and enforcing the terms of this
32 Consent Decree.

1 **XVI. INTEGRATION/APPENDICES**

2 30. This Consent Decree constitutes the final, complete
3 and exclusive agreement and understanding among the Parties with
4 respect to the settlement embodied in this Consent Decree. The
5 Parties acknowledge that there are no representations, agreements
6 or understandings relating to the settlement other than those
7 expressly contained in this Consent Decree.

8 **XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

9 31. This Consent Decree shall be lodged with the Court for
10 a period of not less than 30 days for public notice and comment.
11 The United States reserves the right to withdraw or withhold its
12 consent if the comments regarding the Consent Decree disclose
13 facts or considerations which indicate that this Consent Decree
14 is inappropriate, improper, or inadequate. Settling Defendant
15 consents to the entry of this Consent Decree without further
16 notice.

17 32. If for any reason this Court should decline to approve
18 this Consent Decree in the form presented, this agreement is
19 voidable at the sole discretion of any Party and the terms of the
20 agreement may not be used as evidence in any litigation between
21 the Parties.

22 **XVII. EFFECTIVE DATE**

23 33. The effective date of this Consent Decree shall be the
24 date upon which it is entered by the Court.

25 **XVIII. SIGNATORIES/SERVICE**

26 34. Each undersigned representative of Settling Defendant,
27 the Assistant Attorney General for the Environment and Natural
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1 Resources Division of the United States Department of Justice and
2 the Deputy Attorney General of the California Department of
3 Justice, certifies that he or she is authorized to enter into the
4 terms and conditions of this Consent Decree and to execute and
5 bind legally such Party to this document.

6 35. Settling Defendant hereby agrees not to oppose entry of
7 this Consent Decree by this Court or to challenge any provision
8 of this Consent Decree, unless the United States has notified
9 Settling Defendant in writing that it no longer supports entry of
10 the Consent Decree.

11 36. Settling Defendant shall identify, on the attached
12 signature page, the name and address of an agent who is
13 authorized to accept service of process by mail on behalf of
14 Settling Defendant with respect to all matters arising under or
15 relating to this Consent Decree. Settling Defendant hereby
16 agrees to accept service in that manner and to waive the formal
17 service requirements set forth in Rule 4 of the Federal Rules of
18 Civil Procedure and any applicable local rules of this Court,
19 including but not limited to, service of a summons.

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O R D E R

IT IS ORDERED that the Consent Decree in United States and State of California v. Oil & Solvent Process Company, Chemical Waste Management, Inc., Fairchild Holding Corporation, and R. H. Peterson Company, Consolidated Cases CV 98-0760, CV 97-8230, CV 96-6634 (TJH) lodged with the Court on June 3, 2003 is re-approved. No comments were received from the public and the Court's determinations with respect to the consent Decree remain the same. The effective date of the Consent Decree will be the entry date of this Order (not July 16, 2003).

Dated: 9/24/03


HONORABLE TERRY J. HATTER
UNITED STATES DISTRICT JUDGE

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of UNITED STATES et. al. v. OIL AND SOLVENT et al.
3 Consolidated Cases CV 98-0760-TJH, CV 97-8230, CV 96-6634 TJH,
relating to the Suburban Operable Unit of the San Gabriel Valley
Superfund Sites.

4 FOR THE UNITED STATES OF AMERICA

5 Date: 3.5.03

Tom Sansonetti
6 THOMAS L. SANSONETTI
7 Assistant Attorney General
8 Environment and Natural Resources
Division
U.S. Department of Justice

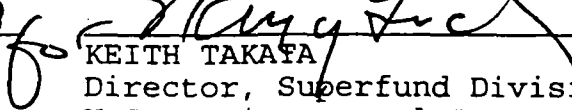
9 Date: 6/20/03

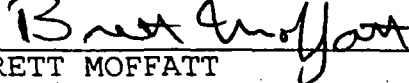
Soroush Richard Shehabi
10 SOROUSH RICHARD SHEHABI
11 Trial Attorney
12 Environmental Enforcement Section
13 Environment and Natural Resources
Division
U.S. Department of Justice
202-616-8766; Fax: 202-514-2583.

14 DEBRA W. YANG
15 United States Attorney
16 LEON W. WEIDMAN
17 Assistant United States Attorney
18 Chief, Civil Division
19 MONICA MILLER
20 Assistant United States Attorney
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2 matter of UNITED STATES et. al. v. OIL AND SOLVENT et al.
3 Consolidated Cases CV 98-0760-TJH, CV 97-8230, CV 96-6634 TJH,
4 relating to the Suburban Operable Unit of the San Gabriel Valley
5 Superfund Sites.

6 FOR THE UNITED STATES OF AMERICA

7 Date: 10 June 2003 
8 KEITH TAKAFA
9 Director, Superfund Division
10 U.S. Environmental Protection Agency
11 Region IX

12 Date: April 11, 2003 
13 BRETT MOFFATT
14 Assistant Regional Counsel, Region IX
15 U.S. Environmental Protection Agency
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relating to the Suburban Operable Unit of the San Gabriel Valley
Superfund Sites.

4
5 FOR THE STATE OF CALIFORNIA DEPARTMENT
OF TOXIC SUBSTANCES CONTROL

6
7 Date:

2/28/03



8 THOMAS COTA
9 Branch Chief, Southern California
Cleanup Operations
10 Cypress Office
11 California Department of Toxic
12 Substances Control

13
14 Date:

March 4, 2003



15 ANN RUSHTON
16 Deputy Attorney General
17 California Department of Justice
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28

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2 matter of UNITED STATES et. al. v. OIL AND SOLVENT et al.
3 Consolidated Cases CV 98-0760-TJH, CV 97-8230, CV 96-6634 TJH,
relating to the Suburban Operable Unit of the San Gabriel Valley
Superfund Sites.

4 FOR DEFENDANT: Fairchild Holding Corporation

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6
7
8 12/20/02
Date

Signature: Donald E. Miller

10 Name (print): Donald E. Miller

11 Title: Vice President

12 Address: 45025 Aviation Dr, #400

13 Dulles, VA 20166

14
15
16
17
18 Agent Authorized to Accept Service on Behalf of Above-signed Party:

19
20 Name (print): B. Michael Hodge

21 Title: Asst. General Counsel

22 Address: 45025 Aviation Dr, #400

23 Dulles, VA 20166

24
25 Ph. Number: 703-478-5858